HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Jaspal Singh & Anr. Versus State of Rajasthan.

S.B. Criminal Appeal No. 770/2003 against the judgment and order dated 2-7-2003 passed by the Special Judge, NDPS Act Cases, Rajgarh, district Churu, in Sessions Case No. 15/1998.

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Date of Judgment: May 03, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.L. Bishnoi, for the appellants.
Mr. JPS Chaudhary, Public Prosecutor for the State.

BY THE COURT:

This criminal appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short, " the Code" hereinafter) is directed against the judgment and order dated 2-7-2003 passed by the Special Judge, NDPS Act Cases, Rajgarh, district Churu (for short, "the trial Court" hereinafter) in Sessions Case No.15/1998, whereby the trial Court convicted both the appellants for the offence under Section 8/15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act" hereinafter) and sentenced each of them to undergo ten years' rigorous imprisonment and a fine of Rs.1,00,000/-, in default of payment of fine further to undergo 2 ½ years rigorous imprisonment. Aggrieved by the judgment and order of

conviction and sentence, the appellants have filed the instant criminal appeal.

Briefly stated, the facts, to the extent they are relevant and necessary for the decision of this appeal, are that PW 6 Jeeta Ram, Station House Officer, Police Station, Gangashahar, on 9-6-1994, along with Sub-Inspector PW 8 Gurdeep Singh, PW 2 Anop Singh, Bharat Singh, Kishan Lal, Mahendra Singh, Jagdish Prasad and Vikram Singh, while on patrolling duty at 11:30 PM, went to Satyu Road Circle, Taranagar. At about 12:00 in the night, they held a Nakabandi. At about 1:00 AM, a jeep was noticed coming from Satyu Road. The said jeep was got stopped by the police party. Two persons alighted from the jeep and both of them disclosed their names as appellants Jaspal Singh and Budhu alias Budh Singh. On checking the jeep, it was found transporting poppy husk. Both the appellants fled away. They were chased by the police party but could not be apprehended. On checking the jeep, it was found carrying eleven bags, each containing 39 kgs of poppy husk, which were seized by the police. Subsequently, the appellants were arrested. After usual investigation, the police filed Challan against both the appellants for the offence under Section 8/15 of the NDPS Act. The trial Court framed charge, which the appellants denied and sought trial. The prosecution adduced evidence by producing eleven witnesses and certain

documents were got exhibited. The appellants made statements under Section 313 of the Code and denied the allegation. Vide judgment and order impugned, the trial Court convicted and sentenced both the appellants, as noticed above. Hence this appeal.

I have heard learned counsel for the appellants and the Public Prosecutor for the State. Carefully gone through the judgment and order impugned, as also the record of the trial Court.

It is contended by the learned counsel for the appellants that there was a secret information with the police which was not sent to the higher officers and, therefore, the provisions of section 42 of the NDPS Act have not been complied with. It is further contended that the Motbirs to the search and seizure have not supported the prosecution case and, therefore, the conviction based solely on the testimony of police witnesses cannot be sustained. It is further contended that there is variance in the weight of the samples taken from the appellants and received by the State Forensic Science Laboratory, which creates a doubt in the prosecution case. Lastly, it was contended that both the appellants have not been identified by the police witnesses as according to the prosecution case, both the appellants fled away leaving the jeep on the road, in which the alleged contraband poppy husk was being transported.

Learned Public Prosecutor appearing for the State supported the judgment and order impugned and contended that both the appellants were identified by the prosecution witnesses. PW 2 Anop Singh, PW 6 Jeeta Ram and PW 8 Gurdeep Singh have identified both the appellants. Learned Public Prosecutor submits that so far as appellant No.1 Jaspal Singh is concerned, when prosecution witness PW 2 Anop Singh was examined, counsel for the appellants did not dispute his identity as on the relevant date, appellant Jaspal Singh was not present in the Court; however, both the appellants were identified by PW 6 Jeeta Ram and PW 8 Gurdeep Singh. Public Prosecutor further submits that when the jeep was intercepted during Nakabandi, both the appellants were found in the jeep, they alighted from the jeep and disclosed their names to the police party and thereafter the appellants fled away and, therefore, according to the learned Public Prosecutor, the prosecution has been able to prove the identity of both the appellants beyond reasonable doubt. So far as variance in the weight of the samples taken and received by the FSL is concerned, according to the learned Public Prosecutor, it was due to the moisture and also on account of the fact that the samples were weighed by the FSL including the polythene bags as is clear from the FSL report.

I have given my thoughtful consideration to the rival

submissions made by the learned counsel for the parties.

PW 6 Jeeta Ram, the seizure officer, who at the relevant time was posted as the SHO, Police Station, Gangashahar, stated that on 9-6-1994, he along with other police officials noticed above, while on patrolling duty, held a Nakabandi at Satyu circle. While going for patrolling duty, two Motbirs were also taken, they were served with notices to become Motbirs and they consented thereto. At about 1:00 AM on 10-6-94, they noticed a jeep coming from Hadiyal to Satyu Road Circle. The jeep was got stopped. Both the appellants alighted from the jeep and on being asked, they disclosed their names as appellants Jaspal Singh and Budhu alias Budh Singh. On being asked what they are carrying in the jeep, they disclosed that those were domestic goods; however, on being checked, both the appellants fled away and the jeep was found carrying eleven bags, each containing 39 kgs of poppy husk. Two samples of 500 grams each were taken from each of the bags. The seizure memo was prepared. Memo of specimen seal was also prepared. Site inspection memo and site plan were prepared vide EX.P/3 and EX.P/3A respectively. The contraband poppy husk and the samples were sealed on the spot in the presence of the Motbirs and thereafter on reaching the police station, the crime report was registered. A detailed report of search, seizure and arrest was sent to the higher officer vide

EX.P/8. A notice EX.P/10 was served on the owner of the jeep Baldev Dass and he was arrested vide EX.P/11. He has proved the notices EXP/12 and EX.P/13 given to the Motbirs and their consent, notice EX.P/14 given to Baldev Dass, the owner of the jeep, the FSL report EX.P/16, the receipt issued by the FSL regarding handing over the sample packets vide EX.P/6, Malkhana Register EX.P/5. He has identified the appellants in the court.

PW 2 Anop Singh, who accompanied PW 6 Jeeta Ram on the relevant date and time, stated that along with PW 6 Jeeta Ram, the SHO and other police staff, he went to Taranagar town in the jeep for patrolling duty. They reached Satyu Road Circle and held the Nakabandi. A jeep was found coming from Satyu Road. A signal was given to stop. On the jeep having been stopped, both the appellants alighted from the jeep and disclosed their names. On being asked what they were carrying in the jeep, they stated that those were domestic goods. The jeep, on being checked, was found carrying poppy husk. Both the appellants, noticing that the jeep is being checked, fled away. The jeep was found carrying eleven bags, each containing 39 kgs of poppy husk. Two samples of 500 grams each were taken from each of the eleven bags. The poppy husk was seized, the seizure memo and specimen seal were prepared. Thereafter the contraband poppy husk and the samples were

sealed.

PW 8 Gurdeep Singh, Assistant Sub-Inspector, who accompanied PW 6 Jeeta Ram SHO, on the relevant date and time of patrolling duty, also made the statement similar to that of PW 6 Jeeta Ram and PW 2 Anop Singh.

PW 3 Raj Narain, the Malkhana Incharge, has proved the entries in the Malkhana Register EX.P/5, EX.P/5A and EX.P.17. He stated that eleven bags of poppy husk along with the samples, were deposited with him which were recorded in the Malkhana Register. The contraband poppy husk, the samples and the specimen seal, as long as remained with him, remained in the sealed condition and the seals thereon remained intact. On 17-7-94, he handed over eleven sample packets of Crime Report No. 62/1994 in properly sealed condition to PW 5 Rawta Ram Meena for taking them to the FSL and the sample packets were deposited with the FSL vide EX.P/6. He stated that the sample packets, from the date they were deposited with him and till sent to the FSL, remained in the sealed condition and the seals thereon remained intact.

PW 5 Rawta Ram Meena stated that on 17-7-94, he took eleven sample packets from the Malkhana Incharge PW 3 Raj Narain to be taken to FSL.

The samples which were sent to FSL were examined vide EX.P/21. The FSL report EX. P/21 shows that the FSL

received eleven packets marked A1 to K1 enclosed with white cloth cover, which were properly sealed bearing impressions which tallied with the specimen seal impression forwarded and the seals were intact. The FSL report EX.P/21 shows that each of the packets marked A1, B1, C1, D1, I-1 contained dried yellowish brown coloured powdered substance weighing approximately 640 grams along with the cloth cover. Each of the packets marked E1,G1 and J1 contained dried yellowish brown coloured powdered substance weighing approximately 580 grams along with the cloth cover. Each of the packets marked F1, H1 and K1 contained dried yellowish brown coloured powdered substance. The substance contained in the packets marked F1, H1 and K1 weighed 620 grams along with the cloth cover, 620 grams along with the cloth cover and 540 grams along with cloth cover. On chemical examination, water extract of the sample contained in each of the packet marked A1 to K1 gave positive test for the presence of chief constituents of opium, hence the sample is of dried crushed capsules of poppy.

From the evidence of the prosecution witnesses noticed-above, it has been established that at the time of Nakabandi, the jeep was intercepted, both the appellants were found in the jeep and they disclosed their names to the police party. On checking the jeep, it was found carrying eleven bags of poppy husk, each bag containing 39 kgs of poppy husk. On

chemical examination by the FSL vide EX.P/21, the samples were found to be of dried crushed capsules of poppy.

Before the trial Court, the identity of the appellants had been proved by the prosecution witnesses PW 2 Anop Sngh, PW 6 Jeeta Ram and PW 8 Gurdeep Singh. PW 8 clearly stated that he had earlier also occasion to see appellant Jaspal Singh as appellant Jaspal Singh had been appearing in the Court in some other case and he was seen by this witness earlier also. Even the counsel for appellant Jaspal Singh appearing before trial Court, when PW 2 Anop Singh was being examined by the trial Court on 22-5-2002, did not dispute the identity of appellant Jaspal Singh as he was not present in the court; however appellant Budhu alias Budh Singh was identified by PW 2 Anop Singh in Court since on that date he was present in the Court.. Thus, from the statements of the prosecution witnesses, both the appellants have been identified by them and, therefore, it has been established beyond reasonable doubt that both the appellants were found in possession of the contraband poppy husk when checked by the police party.

So far as variance in the weight of the samples taken from the contraband poppy husk seized and received by the FSL is concerned, from the perusal of the FSL report EX.P/21, it is more than clear that the weight mentioned therein is along with the cloth cover. There is hardly any variance because the

samples were weighed by the FSL along with the cloth covers. More so, at no point of time, the appellants challenged the FSL report and, therefore, in view of the decision of the Hon'ble Supreme Court in Ashok Kumar Vs. State of Haryana, 2000 SCC (Cri.) 506, the reduction in the weight of the sample is of no consequence. In Ashok Kumar's case (supra), the Hon'ble Supreme Court has held that when the report of the Chemical Analyser clearly establishes that the articles examined by him were the articles connected with that case and neither the report of Chemical Analyser was challenged nor was any application given for examining him as a witness to establish that the seals on the samples were faint when written by him and it was not possible to say whose seals they were and, therefore, the contentions raised in this respect were found to be without substance. In Madan Lal & Anr. Vs. State of Himachal Pradesh, 2003 SCC (Cri.) 1664, the Hon'ble Supreme Court, while considering the reduction in weight of the sample sent for analysis, rejecting the allegation of tampering with the seals, held that the allegation has rightly been rejected by the Courts below giving reasons that there was very minimal and almost ignorable variation in weight.

So far as the contention of the learned counsel for the appellants regarding compliance of Section 42 of the NDPS Act is concerned, from the whole of the prosecution case, it

does not appear that the police had received any secret information prior to checking of the jeep while going on patrolling duty and holding the Nakabandi. Therefore, there arises no question of reducing the information to writing and sending to the higher officer. The contention raised by the learned counsel for the appellants in this regard appears to be misconceived.

So far as the contention of the learned counsel for the appellants regarding Motbir witnesses not supporting the prosecution case is concerned in view of the recent decision of the Hon'ble Supreme Court in P.P. Fathima Vs. State of Kerala, JT 2003 (8) SC 527, in my view, the prosecution case cannot be doubted only on this ground because by the evidence of other witnesses like PW 6 Jeeta Ram, as well as other two witnesses, viz. PW 2 Anop Singh and PW 8 Gurdeep Singh, who had accompanied PW 6 Jeeta Ram for patrolling, held the Nakabandi, made search and seizure in their presence, it has been proved beyond reasonable doubt that the contraband poppy husk was found in the possession of the appellants in the jeep and both the appellants were the occupants of the jeep and had knowledge that they are transporting huge quantity of contraband poppy husk.

On close scrutiny of the statements of the prosecution witnesses and re-appreciation of the evidence, in my

view, the prosecution has proved the case beyond all reasonable doubt against the appellants and, therefore, the trial Court was justified in convicting and sentencing the appellants, as noticed above. I do not find any error in the judgment and order impugned.

In the result, the appeal fails and is hereby dismissed. The judgment and order impugned passed by the trial Court convicting and sentencing the appellants is affirmed.

(H.R. PANWAR), J.

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